



**PEOPLE AGAINST SUFFERING  
OPPRESSION AND POVERTY  
(PASSOP)**

**LGBTIQ ADVOCACY PROGRAMME**

**REPORT ON  
AN INVESTIGATION OF THE LGBTIQ  
ADVOCACY WELFARE CRISIS**



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This report is the product of People Against Suffering Oppression and Poverty (PASSOP) with joint funding from The Other Foundation and Calamus Foundation.

PASSOP is a Civil Society Organization based in Cape Town and working throughout South Africa devoted to protect and securing the rights of asylum seekers, Refugees and Immigrants in South Africa. Through PASSOP's LGBTIQ Advocacy Programme, PASSOP advocates for the rights of Lesbian, Gay, Bisexual, Transgender, Intersex and Queer (LGBTIQ) asylum seekers, refugees and immigrants providing support through networking and a wide range of social and paralegal services.

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## **LIST OF ACRONYMS**

- 1.** CCMA- Commission for Conciliation, Mediation and Arbitration.
- 2.** DHA- Department of Home Affairs
- 3.** DOH- Department of Health
- 4.** HIV- Human Immunodeficiency Virus
- 5.** LGBTIQ- Lesbian, Gay, Bisexual, Transgender, Intersexual and Queer
- 6.** PASSOP- People Against Suffering Oppression and Poverty
- 7.** RRO- Refugee reception Centre
- 8.** SOGI- Sexual Orientation and Gender Identity
- 9.** UN- United Nations
- 10.** UNHCR- United Nations High Commission for Refugees

## **EXECUTIVE SUMMARY**

There are a large number of ‘sexual refugees’ seeking sanctuary in South Africa country and they are among the most marginalized and discriminated social groups in South Africa. Our program, People Against Suffering Oppression and Poverty (PASSOP), advocates for the rights of Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTIQ) asylum-seekers and refugees, assists them with paralegal advice and empowers this social group by building a support network. PASSOP advocates for the rights of all refugees, asylum-seekers and immigrants in this country, and it is high time that the plight of LGBTIQ refugees and asylum-seekers is highlighted and supported.

Homophobia and transphobia are serious issues all across Africa and the world. In many countries, LGBTIQ people face constant harassment and harsh punishments, ranging from fines and imprisonments to death solely for expressing their sexual orientation or gender identity. They are also subject to discrimination, violence and excommunication in their communities and even their immediate families. This unjust reality in countries ranging from Uganda to Malawi and even Syria has led to an influx of sexual refugees fleeing to South Africa, the only country on the African Continent that grants refugee status on the basis of sexual orientation or gender identity.

However, despite South Africa’s official position, the asylum application process is fraught with problems and a lack of transparency and many LGBTIQ refugees are being turned away unjustly. South Africa’s Department of Home Affairs and its Refugee Status Decision Officers often exhibit explicitly homophobic and xenophobic attitudes toward LGBTIQ asylum seekers and conduct themselves in ways that directly contradict their legal obligations under the Refugees Act and as a signatory to both the UN and the Organizations of African Unity conventions on refugees. This behavior results in a few acute issues for LGBTIQ asylum

seekers: 1) unwarranted and unjust rejection of applications, 2) prolonged decision processes that leave applicants unable to integrate into South African society and build sustainable lifestyles for decades, 3) perpetuated homophobic and xenophobic attitudes that inform the way these individuals are treated in everyday life and limits their access to work, housing, education, and healthcare. Without proper documentation, refugees face unemployment or exploitation – sometimes resorting to sex work for survival where they face further vulnerabilities and violence. Moreover, those who are granted status often still face discrimination and harassment in their new communities in South Africa. When xenophobia is compounded with homophobia, it leaves many gay and transgender immigrants in conditions not unlike those in the countries they fled in the first place. In addition, the Department of Home Affairs has been closing Refugee Reception Offices throughout the country, forcing refugees to travel far distances to the Pretoria Office at great financial and occupational cost to renew their permits every 3-6 months. For LGBTIQ refugees, who often end up settling near Cape Town in the Western Cape as it has a reputation for being more gay-friendly, these results in an exceptional burden and limiting factor to regular work and financial stability. The South African Supreme Court has ruled these Reception Office closings unlawful, yet no action has been taken to reopen them. When refuge-seekers do manage to get to a Refugee Reception Office, they often face further unconstitutional discrimination on the basis of their identities. Recognizing the vulnerability of their particular situation, this program provides support and advocacy for the LGBTIQ asylum-seeking population – providing legal consultation and support in obtaining documentation, as well as financial, medical and psychological empowerment for integration. PASSOP's LGBTIQ Refugee Advocacy Program conducted a survey with the purpose of understanding the courses of the problems LGBTIQ face with the aim of developing a support system to address their needs by engaging stakeholders and government departments to frame policies that are advantageous to both refugees and all LGBT in South Africa.

This report:

- Targeted 200 refugees from Western Cape and Gauteng.
- Reached 90 (45%) participants. 56% of the participants were from Western Cape and while Gauteng produced 44%
- The participants are from different countries in Africa including Malawi, Zambia, DRC, Congo-Brazzaville, Zimbabwe, Nigeria, Sudan, Somalia, Kenya, Uganda, Burundi, Mozambique, Lesotho, Swaziland, Botswana, Cameroon, Angola and Ethiopia.
- The report is based on questionnaires, interview and focus group discussions.

## **ACCOMMODATION**

Regarding the accommodation of the refugees, the survey highlighted the following points:

- Discrimination remains a problem with landlords.
- It's not easy to get a decent house when you are a foreigner especially LGBTIQ community.
- Some landlords boot out refugees of their homes when they discover their sexual orientation and gender identity. A little or no action is taken by the police to address this issue.
- Similarly, some landlords raise the rent when they discover their tenants are LGBTIQ.
- Only 25% of the participants mentioned that they have decent homes
- 45% of the participants are living in a shack
- 21% are living with friends or relatives
- 9% are homeless

## **EMPLOYMENT**

Regarding the employment, the survey highlighted the following points:

- 32% of the targeted community is employed full time.
- 25% are employed part time.
- 43% are not employed. Among them, 49% are not employed because of the scarcity of jobs, and 51% because they do not have any work permit. Asylum permit technically allows them to work in South Africa but the general public's homophobia, xenophobia and unawareness that the permit allows them this right result in them not hiring LGBTIQ refugees, asylum seekers and immigrants. On the other hand the process of acquiring asylum permit is not that easy for most of them to follow. With closure of Cape Town RRO aggravated the situation. This meant that all new comers in Cape Town have to go to Durban, Pretoria or Limpopo to apply for this permit.
- Most of LGBTIQ have problems finding work commensurate with their skills and experience.
- Discrimination regarding sexual orientation and gender identity is the main reason for unemployment.
- Skills are another problem for most of the unemployed LGBTIQ Refugees
- Some have lost their jobs after their sexual orientation has been revealed either to their workmates or bosses.
- Most of them work in restaurants, hotels and clubs, and a few in construction or other fields.
- Some LGBTIQ have reported unfair dismissal
- Some companies are only hiring those who have work permit and living those with asylum permit yet both these two permits allows all to work.
- Some companies are still racist and they can't employ black LGBTIQ refugees regardless of their qualifications while other company hires only South Africans, leaving refugees behind.
- Some are forced to go for HIV testing and once they are found positive, they are denied the rights to work regardless of their skills and qualifications.

- In Joburg, most LBGTIQ need to work as sex workers because other jobs are underpaid.

## **INTEGRATION**

Regarding the integration of the LBGTIQ, the survey highlighted the following points:

- Illegal closure of Refugee Reception Offices means LBGTIQ asylum seekers must travel to hundreds of miles to Pretoria, spending much of their earnings for transportation.
- A racial division within gay communities and spaces means black LBGTIQ people often face discrimination and exclusion from “safe spaces”.
- There are financial burdens to access “safe spaces” that are often organized around spending money and also require funds for transportation, since asylum seekers can rarely afford to stay in the city.
- Xenophobia remains particularly strong outside of the city where LBGTIQ asylum seekers are often forced to live.
- Language represents an important barrier (only 23% can speak South African language).
- There is also some self-discrimination amongst LGBT communities themselves as many LBGTIQ people have internalized homophobic and racist attitudes from broader society.

## **DOCUMENTATION**

Regarding the access to documentation, the survey highlighted the following points:

- Mistreatment continues at the Department of Home Affairs. People get on the queue as early as 5 am and they can spend the whole day there without being assisted. To some it takes the whole week and even to the extent of

sleeping there hoping that they will be assisted but only to be returned with nothing.

*“It took me ten solid days queuing and I got assisted on the eleventh day, only to be rejected”*

- Officials produce discriminatory questions, for example:  
*“Why are you gay?” “Can you prove to me that you are gay?”*
- Language barrier remains a problem at home affairs when applying for documents. When translators are brought in, they are often members of the individual’s country of origin or other community that may hold conservative biases, making the applicant unable to fully report their story. It was reported that most of the LGBTIQ finds it hard to express themselves to the people they don’t know regardless of them coming from the same countries. Some translators are homophobic
- Only 8% of applicants are awarded status, with many rejections based on inaccurate or blatantly homophobic justifications.
- The closure of Cape Town and Joburg Reception Centers causes many problems for new comers in those two cities.
- Most of them opt to stay illegal due to distance and financial problem of funding transportation to renew their permits
- Renewal of papers is another nightmare.

*“ I got my papers from Pretoria last year. First time they only gave me three months renewable. When I went second time they gave me two months renewable. I work in Cape Town in a restaurant and I only get paid R2500 per month. But still I have to travel to Pretoria every two months to renew my papers with the little resources I have. Is that fair?”*

- There is a group of civilian volunteers working for the Department of Home Affairs and they are arresting and collecting money from people.

*“ These volunteer people are just there to rob us. When you meet them just know that you are going to pay something not less than R100 even if you have papers that are valid. The worst part of it is that in a day you can meet one in the morning and you bribe them and if you meet another team later in the day, you still have to bribe them since the first team didn’t give you anything authentic to show that you have already bribed. How long are we going to do this? And the moment they realise that you are gay they will mock you and ask for more because they believe that gay people have more money to spend”*

## **ARREST BY POLICE/DEPARTMENT OF HOME AFFAIRS**

Regarding relationships with law enforcement and government officials, the survey highlighted the following points:

- Johannesburg Police are greedy and very abusive towards the general refugee population including LGBTIQ. Every time you meet Police officers in Johannesburg you just know that you are going to be stopped and searched and not only that but bribing them for nothing. They would ask you for the Identity copy or your permit to stay in South Africa. Not only that but they would ask you for us to make a plan for them which means bribing them or buying them a cold drink. If you don’t do that they lock you up or take your paper and destroy it. We do not know if this is their job to verify papers on behalf of the DHA or this is against their job description.
- 72% were once arrested by or stopped by the police due to paper issues.
- 37% were sent to custody due to paper issues.
- 58% were released upon bribing law enforcement.
- 5% were voluntarily released.

- Police destroyed documents without proper verification while 60% of those papers were valid and authentic. 30% were not authentic and 10% authentic but not valid.
- Few arrests were made due to a lack of documentation, demonstrating a miseducation regarding proper identification and the structural issues that keep applicants from maintaining valid documentation.
- Most of the arrests in Gauteng are initiated by a group of civilian volunteers who work for the Department of Home Affairs.
- People are deported/arrested silently by the Department of Home Affairs, even those with valid and authentic papers. They continue to refuse to release transparent information about number of people detained and deported and for what reasons.
- 68% of those arrested are put in cells with homophobic and xenophobic individuals and are exposed to further violence.
- Only 40% have access to health service while the rest were denied the service.
- Only 10% have access to lawyers.
- 92% were detained for 48 hours without being charged.
- 75% could not have any contact with their family.

## **COUNSELLING**

Regarding counseling, the survey highlighted the following points:

- 20% went through Psycho-social counseling from the trauma of living as an LGBTIQ person in their country of origin, making the journey to seek asylum, and continuing to live in a state of displacement as they cannot receive basic services legally obliged to them under the Refugee Act in South Africa.
- 10% could not finish the process due to limited resources and unprofessional processing by officials.

## **HEALTH**

Regarding health service, the survey highlighted the following points:

- Some staff are still discriminating patients regarding their sexual orientation and gender identity.
- 95% of LGBT asylum seekers without IDs cannot access health service.
- Similarly, 72% of those without proof of address could not access health service.
- Some questions are discriminatory, for example:  
*“Why do you have an STI? Where did you get it from?”*
- There are few gay friendly clinics with long waiting for the appointments due to the high demand: one month or more on the waiting list before you meet the doctor.

## **INTRODUCTION**

LGBTIQ Rights are Human Right. **1** The rights of LGBT people are now recognized, if partially, in many locations across the world. The situation faced by people of varying sexual orientations and gender identities is particularly egregious in Africa. 38 out of 54 countries criminalize homosexuality. In Nigeria, Liberia, Egypt, Botswana, Malawi, Zimbabwe and Uganda, homosexuality is even punishable by death. Homophobia has complex roots ranging from Christian moral influence and cultural influence from various African and non-African histories and locations. Others suggest that the rapid growth of Islam and Christianity both espousing conservative views on family values and marriage has enticed many Africans to believe that homosexuality should not be entertained in their communities. Many African LGBTIQ face threats and physical persecution or violence, alongside isolation from their communities. Homophobic action, speeches and laws have recently increased. Anti-gay groups have been formed and actively opposed some work and services for LGBTIQ communities.

LGBTIQ have limited choices. Their lives are very difficult and they may decide to relocate to supposedly safer countries, such as South Africa. Unlike other African countries, **2** South Africa presents itself as a beacon of hope for LGBTIQ individuals who are persecuted in their home countries. It is an exception on the continent that the South African constitution protects the Rights of LGBTIQ people. The 1996 Bill of Rights is the first South African Bill to prohibit discrimination of an individual based on sexual orientation and gender identity. **3** The signing of the Civil Union Act in 2006 brought legal recognition of gay marriages, positioning the country as the first to do so in Africa and the fifth in the world.

However, many South African citizens have a different view on the matter. Their thinking about LGBTIQ people and rights is different from what the laws and policy suggest. Hate crimes against LGBTIQ people continue to grow without

proper redress to the issue as police officers and government officials fail to prosecute cases and often hold homophobic or xenophobic beliefs themselves. LGBTIQ are attacked on daily basis. Legal rights are important and can be empowering, but they are meaningless in the face of the abuse, intimidations and violence that people with unconventional gender and sexual expression face on a daily basis.

This report represents an initial attempt to document the experiences of LGBTIQ refugees in South Africa who have responded to the realities described and have moved to South Africa seeking asylum on the based on sexual orientation and gender identity in South Africa. PASSOP and other Civil Society organisations including Legal Resource Centre have long been writing reports on issues that LGBTIQ face in South Africa and attempting to address these issues. This is high time that organisations should come together and collaborate to alleviate these issues if they are to work successfully. Using the results of our research and funding from this and future grant opportunities, we intend to work toward a coalitional movement with these sister organizations. Government should also seriously act to address these outstanding issues otherwise it will be recreating the wheels for nothing.

## **EXPERIENCES FROM ORIGINS COUNTRY**

Persecution and discrimination is the main reason why most of the LGBTIQ individuals left their home countries for South Africa. This is accompanied by:

- Families disowning them because of their sexual orientation.
- Not being able to come out or publicly live their lives or coming out and then facing targeted discrimination, including death threats, physical attacks, targeting family members, the destruction of homes, clubs, and organization offices.

These fears make life of LGBTIQ unbearable to live. Traditional and cultural values can be discriminatory. Rejection by family, friends and community at large. No legal back-up since the law does not accept homosexuality which culminates in threats of physical assaults. These are some of the issues that contribute to LGBTIQ refugees leaving their home to other countries.

In African countries, homophobia is strong and religious values play a formidable role in shaping public beliefs. Religious leaders and churches still do not accept homosexuality. LGBTIQ opt not to attend church services due to community attitudes. Some are even killed in their own communities in the presence of faith leaders. For example, here is the arrest story of Tiwonge Chimbalanga a Malawian Trans-woman currently living in Cape Town South Africa. Tiwonge and Steven were arrested in 2009 for holding a public engagement in Malawi which is against their law.

*“I went through a lot for holding a public engagement with my late husband Steven. I was in jail and tortured”*

Another gay guy said:

*“I was disowned by my parents and the entire family when they discovered of my sexual orientation, I then migrated to South Africa where I have been attacked a couple of times by my own communities and the entire communities. I even decided to stop going to church because most of these attacks start from church. I was excommunicated from my church.”*

Beyond hardship and fear, LGBTIQ go through severe trauma and psychological pain of rejection from the community at large including the church. As another testimony demonstrates:

*“I left Somalia because I feared for my life, and as Somalia is a Muslim dominated country, Sharia law is practiced. When I came here I thought it will be a haven for me but unfortunately I got the opposite of that. My own Somali communities were*

*the first to attack me and were followed by the rest of the communities. Let alone getting a place to stay and even to be documented was a dream to me. I am here now illegally. I tried but they cannot assist me. But I cannot go home otherwise I will die soon”.*

With regards to homophobia, there is a relationship between the pervasive attitudes of the public and official institutions’ stances in the same country. Though homosexuality is not illegal in many countries, trends toward discrimination are increasing. Church and community attitude lead to many LGBTIQ being arrested for vague reasons, informally criminalizing homosexuality through culture and social enforcement, even if not explicitly legally.

*“Homosexuality is not illegal in my country, there are no laws that forbid it, but public indecency is an excuse in many countries to arrest and prosecute LGBTIQ”.*

Many have even been harassed by friends and communities and when they report to the police, no action takes place, leaving the victims hopeless. Some countries don’t even have a human rights organization that protects the rights of LGBTIQ people because their constitution doesn’t allow it. In those countries, no activities related to LGBTIQ are organized (e.g. gay pride). Some countries don’t even allow lubricants to be sold or used. There are no gay places or network where people can meet and socialize.

*“In my country, there is no gay organization and government wouldn’t allow operations of such NGO’s.”*

In general, LGBTIQ people in Africa face discrimination from a wide variety of social forms like community attitudes fueled by religion and tradition, rejection by families and community in general and persecution by political and legal institutions. These contributed to many leaving their home countries of origin to another country where they would seek asylum. For most of them due to economic problems, South Africa would be the nearest convenient country to flee

to. South Africa presents itself as the most realistic country to seek freedom from oppression and persecution.

## **EXPERINCES IN SOUTH AFRICA**

Both Cape Town and Gauteng Focus Group Discussions brought new and outstanding stories regarding the life experiences of LGBTIQ in South Africa. Some of the stories were a repeat of the already reported stories that were published in our previous reports.

In this section, we examined several areas of life in order to understand and have a full picture of their experiences as LGBTIQ refugees in South Africa - regarding issues like accommodation, protection, employment, safety, documentation, and integration. The underlying goal propelling this section of the report is to understand the quality of daily experiences, particularly for new comers which make life in South Africa as an LGBTIQ refugee or asylum-seeker hard.

## **ACCOMMODATION**

Unlike other developed countries where a refugee can be offered free accommodation upon arrival, that is not the case in South Africa. Every asylum-seeker, refugee, and immigrant must find their own accommodation upon arrival in South Africa. Most of them face discrimination in the process of acquiring a house or accommodation in South Africa from their landlords. In addition, sometimes with their neighbours, many in this community are often discriminated against based on their sexual orientation and gender identity. This results in frequent relocations in the search of a safe living environment.

*“It is very unsafe to live in South Africa, I have been robbed and they have broken into my house over ten times and took everything leaving me with nothing, yet my neighbours who are not gay ever experience that. I then realized that they targeted me because of who I am. Someone openly told me that the fact that I’m LGBTIQ means that I have money and can buy whatever I want anytime.”*

*“My shack was torched by much known people and I reported the matter to the police but up until now, no action has been taken. I gave up and opted to live in a very expensive room in the nearest suburb for my safety.”*

Rental Housing Act (Act 50 of 1999) protects the rights of tenants and landlords in South Africa. Looking at the data, a fraction of the LGBTIQ community report their cases to the tribunal of housing. The majority do not report due to fear of discrimination and/or lack of knowledge of the existence of such tribunals. Few report to the police while others just simply give up.

## **EMPLOYMENT**

Employment is currently the biggest concern in South Africa according to the interviewed LGBTIQ refugee community. Discrimination by employers, colleagues and clients has been recorded. This makes it hard for the LGBTIQ community to find jobs. In the interviewed survey, it was found that unfair dismissals for unknown reasons were recorded at 45%. Workplace harassment of the LGBTIQ community by employers and colleagues on the job persists, often forcing individuals to leave their jobs. 40% who lost their jobs reported the event and related offenses to the CCMA. The rest decided to keep quiet for the fear of their lives or their past experiences knowing that nothing will be done.

*“I was fired by my employer because of my clothing which to them was against their policy. But when I was first introduced to the company, nothing was said. I realized that it was not only about my clothes, but there was more than that especially as a transgender person. I was using female toilets and most of them didn’t like it.”*

Out of nine cases that were reported to CCMA, one was reinstated; the other three were paid for, while other cases were dismissed.

Documentation is another challenge and it contributes a lot to the scarce number of jobs for most LGBTIQ. 60% of LGBTIQ refugees couldn’t get decent jobs due to their lack of proper documentation. Lack of employment results in not being able to afford to travel to Pretoria every 3-6 months to renew their permits due to financial problems, perpetuating a cycle in which asylum seekers need employment to be able to afford to renew their papers, but also need renewed papers to find and keep employment. Many employers will not allow

asylum seekers the necessary time off to travel to renew their permits. Difficulty finding reliable employment leads many LGBTIQ asylum seekers to turn to sex work, further making them vulnerable to arrest and violent attacks.

*“I tried to get proper documentation from the Department of Home Affairs but it was not easy due to their unprofessional officer. I ended up starting with commercial sex; eventually this other guy I slept with introduced me to his friend who later employed me. But this guy can demand sex anytime and I just do it to protect my job, I have no choice.”*

*“I am unemployed but I need to survive so I go to the Adult World where I spend whole day servicing white for money and that’s how I am surviving. It is better that way than to be tortured like it was with my last employer because I am gay.”*

## **SAFETY**

Nearly all those interviewed left their home countries due to various forms of danger and persecution. They find it hard to believe that the country they thought would be a safe haven turned into another country in which they feel unsafe due to their sexual orientation and gender identity. Those living in townships and similar locations are often in greater danger than any other community.

*“I can’t event live in townships with the way I normally dress. It is dangerous for us transgender, but unfortunately we have no choice but still live in such places because we do not have money to rent spaces in the cities.”*

Homophobia accompanied by xenophobia and transphobia.

*“We are called different names and if you don’t speak their language or understand what they are saying it means you are a threat to them and you are in danger.”*

Black and Coloured people are more homophobic than white in most of the communities.

*“If you dress in expensive clothes, just know that you are inviting problems from the community.”*

On average, LGBTIQ report cases to the police on a daily basis, but one of out ten cases will be addressed. The rest are often ignored. In many cases, it is unsafe even to contact the police who most of them are homophobic as well. Silent reports indicate that some police would even contribute to the existing homophobic attacks for LGBTIQ.

## **INTEGRATION OF LGBTIQ IN SOUTH AFRICA**

Integration of LGBTIQ refugees into the entire community is another large challenge. South Africa has recently attacked foreigners stating that they are stealing jobs including LGBTIQ to be integrating in the broad South African society. LGBTIQ are rejected by the community they are living in, including some NGOs that implement LGBTIQ projects and would only target LGBTIQ who are South African. However, it is impossible to disentangle feelings of rejection and alienation on account of nationality rather than sexual orientation and gender identity. Few LGBTIQ felt welcomed in their community by fellow South African LGBTIQ (32%) and 55% felt rejected while the rest said they are uncertain (Cape Town and Gauteng). This is doubly restrictive as LGBTIQ communities often exhibit racism and classism.

With respect to general acceptance and societal attitude a number of LGBTIQ reported that they were verbally and physically attacked because of their sexual orientation and gender identity by mostly coloured and black South African communities. While some have been attacked by foreign communities.

*“I am a Somalia lesbian but since I left my country to South Africa; I can’t find peace. The worst is that I have been attacked by my own Somali community to the extent of threatening me that they are going to kill me.”*

*“Malawians have been attacking me and even breaking into my house and they take all my house properties.”*

Police do little to resolve these attacks and this has led to many giving up.

*“I was beaten up by a number of the community and I reported to the police where I was not helped at all but they just told me to go to the hospital.”*

## **HEALTH**

There are few health facilities that are friendly to the LGBTIQ communities and unfortunately the demand is very high for such clinics where it can take a month for one individual to meet the doctor after booking an appointment. Access is further restricted as many LGBTIQ do not have the proper documentation to receive certain health services. Or, again, their papers expire due to structural problems within the renewal process as discussed above. Some have also been sent back because they could not present proof of address. As cited above, LGBTIQ face a lot of discrimination from landlords and attacks from communities which leads to frequent relocation to different areas, hence difficulty in getting proof of address. Those staying with landlords often can't have access to any documents like water bills, electricity bills that show the proof of address due to the tense relationships existing between the two parties.

In addition, some health workers are homophobic and produce discriminatory comments that make most of the LGBTIQ avoid seeking services from public facilities.

## **DOCUMENTATION**

This is biggest issue for all foreign nationals in South Africa including LGBTIQ. Everywhere in the world asylum seekers need to be documented. It is a legal process that allows them to settle in the particular country. Each country has policies and laws that have to be followed and practised regarding to documentation. These laws and policies can change at any time.

In South Africa, documentation is vital because if you are to work in South Africa, you need to be documented first, only then can you attend to basic life necessities, such as opening a bank account, pursuing education, etc. This report also highlights some of the difficulties LGBTIQ face during the documentation period when they arrive in South Africa.

The LGBTIQ refugees and asylum-seekers reported that around 60% of them are using Section 22 of the Refugee Act while only 10% are using Section 24 which formally recognizes their refugee status. While persecution on the ground of sexual orientation and gender identity is recognized as a basis for seeking asylum, this legal truth looks more like a dream to many. The experience from DHA is a nightmare. LGBTIQ are treated negatively. Many have applied more

than five times before they are accepted. LGBTIQ applicants are regularly mistreated by security and DHA officials and called names. Some were even asked to prove to the officials if they are gay or not, which is not possible practically. Because applicants must stand on a queue for the whole day or more while waiting for the officials to attend to them and queues are segregated by gender, transgender applicants or effeminate gay men/masculine lesbian women often experience harsh abuse while attempting to renew their paperwork to maintain legal presence in the country. Security forces often do not intervene and even contribute to such harassment at times.

*“I went there more than ten times because I had no choice but to be documented. We were constantly mocked and called by different names; I nearly one day collapsed because of hunger until one Malawian lady gave me water and something to eat while security was just laughing at me.”*

65% of them didn't mention the issue of sexual orientation in the application which led to their application rejected or not granted Section 24 which is a refugee status due to the fear of being mocked and asked to prove their orientation, while others were ashamed or scared of DHA officials or interpreters. Language is another challenge in the application process. Some interpreters are homophobic and produce hate speech and this has led to many applicants not expressing themselves to their interpreters.

Some were ridiculed based on how they look and inappropriate questions were asked just to tease them.

*“Why are you gay and why did you come to South Africa?”*

Most of the DHA officers do not treat LGBTIQ professionally and this makes the environment unsafe for them. Hence they do not express themselves as they fear being humiliated and at the end of the day fail to get proper documentation.

Closure of Cape Town Reception Office has contributed a lot to the already existing problems. Since the closure in 2013, new comers in Cape Town have to go to Pretoria, Durban, or Musina. These are the people who have just come to South Africa and are not working. They are expected to go to Pretoria to queue for more than a day to get a paper. In Pretoria or Durban, they face lots of challenges, ranging from corruption, unprofessional treatment, and discrimination from the DHA officials. And, these locations often exhibit even more homophobic attitudes than in the Cape Town area.

For those who can manage to get their papers, there is another challenge to face. When it is time to renew their visas, they still have to go to the same office they

got their papers from which means expenditure and queuing for renewal of their visas. This has led to many opting for back door papers where they pay more and get papers that are authentic but has no file records. These papers are coming from inside DHA officers and once caught, you will be arrested which is very risky and against the law.

With the recent change of immigration laws, it has been noted that it is not easy to apply for work permits even those who have good and well-paid jobs find it very difficult to acquire work permits due to the process itself.

Corruption is the biggest challenge in the application process and after. Most of the law enforcement are corrupt and are reaping on the process of acquiring permits including the South African Police.

*“I can’t remember how many times I have met police in Johannesburg where they intimidated and searched me for me to bribe them. I have done that many times but this didn’t solve my problems. Sometimes we just do it for them to let us go but we know that one we met another team we must do the same”*

Many asylum seekers are still waiting for the Refugee Status Determination Office to decide whether to grant them asylum or not. The majority of refugees reported that after they failed their initial interview and the DHA did not explain the next step to them. Some were/ are willing to appeal but they don’t know the step and where to find assistance to make an affidavit to appeal (Section 26 of Refugee Act No 130 of 1998)

## **CONCLUSION**

Most of the LGBTIQ refugees who participated in this research left their home countries due to persecution based on sexual orientation and gender identity. Few left due to fear of being persecuted, but rather existing, immediate violent persecution and so could not live freely, hence opting for seeking asylum in another country. Most of them opted to come to South Africa due to South Africa’s stance on LGBTIQ asylum seekers and LGBTIQ rights in general. However, based on the data gathered in this report, their expectations are not met. LGBTIQ refugees face challenges regardless of the law allowing gay people to do their things freely. They arrived with big dreams which are not fulfilled yet. They anticipated better life in South Africa but they ended up being victims of hate speech, homophobic attacks and discrimination based on sexual orientation and gender identity. These attacks and discriminatory speeches are not only coming from South African citizens but even foreign communities.

*“My home boys from DRC always mock me and I am not welcomed in their society because I am gay. This is the worst experience for me. It’s like I have nowhere to run to.”*

The fulfilment of the Equality in South African Constitution, hailed globally for its progressiveness, appears elusive if not outright false due to so many Human Rights Violations and discriminations. African LGBTIQ people come to South Africa seeking freedom, yet even they continue facing many difficulties. According to this report, LGBTIQ refugees continue to face assault, documentation and violation of human rights across all sectors of society including some government departments. South Africa’s legal system mandates equal treatment to all residing in regardless of sex, race, gender, ethnicity, sexual orientation or national origin. Unfortunately, the legal safeguards alone are insufficient as societal attitudes are often incongruent with the nationals’ anti-discrimination laws. Advocacy is needed to increase awareness of obstacles LGBTIQ refugees and asylum seekers face with the aim of aligning the nation’s anti-discrimination laws with its practices.

In addition, advocacy is needed to ensure compliance by DHA, DOH, employers, law enforcement, landlords with their duty to abstain from discrimination against individuals based on social and nationality.

## **RECOMMENDATIONS**

In this section, we aim to make some recommendation for actions and further research for various actors and stakeholders dealing with LGBTIQ in South Africa.

### **DHA AND OTHER GOVERNMENT INSTITUTIONS**

Many of the problems refugees face come from the DHA in obtaining asylum seekers paper including the process itself. It is the responsibility of the government to uphold the constitution and work to further human rights for all regardless of SOGI and nationality. As such, the following recommendations are addressed to South African government and specifically to DHA:

- a. Educate DHA officials on SOGI as grounds for refugees an asylum seekers application
- b. Provide RRO and DHA officers with LGBTIQ related training regularly (sensitivity and tolerance)
- c. Refresher training for security officers on South African anti-discrimination laws
- d. Take measures to prevent and prosecute acts of violence against LGBTIQ refugees and asylum seekers

- e. Train law enforcement (security, police, prison, boarder officers, immigration, to combat homophobia among general public
- f. Ensure that LGBTIQ refugees and asylum seekers are not deported back to their home countries where their lives are threatened and make sure that asylum laws and policies recognize that persecution on account of SOGI is fully implemented
- g. Adjudicate properly and timely the asylum claims of persons according to the Refugee Act and the UNHCR convention
- h. Treat LGBTIQ refugees and asylum seekers humanely and grant them refugee status timely for them to get employed
- i. Repeal discriminatory laws provisions that forbids refugees to access employment
- j. Make no discrimination in applying the Equity Act to LGBTIQ persons residing in South Africa, whether they are citizens or Refugees
- k. Take claims lodged or reported by LGBTIQ violence against them
  - 1. Reopening of Cape Town Refugees Reception Centre
- m. Enforce stiff penalties for incidences of bribery and corruption by the DHA officials.

## **NGO SECTOR**

1. Continue to train staff to render their services to LGBTIQ Refugees professionally
2. Assist LGBTIQ to get proper documentation and where possible against them (finance) their trips to places where they can apply at most reception centres
3. Make sure of media in the advocacy to raise awareness on human rights issues
4. Assist LGBTIQ in access resources for housing, labour, education, health
5. Develop small business funding for LGBTIQ
6. Establish new shelters for very needy and homeless LGBTIQ
7. Develop programmes that will help in the psycho-social needs of LGBTIQ
8. Strengthens the existing LGBTIQ Networks and equip them with necessary knowledge and financial support
9. Encourage integration of LGBTIQ asylum seekers and refugees into places and organisations concerned with LGBTIQ broadly
10. Organize theme based workshops and conferences with churches, community leaders, and other groups to educate people to change attitude towards LGBTIQ
11. Provide education training programmes on tenant rights and assist tenants in obtaining legal representation in housing courts

12. Capacity building by help refugees to develop writing CVs and train them on basic human rights
13. Implement strict policies to protect LGBTIQ refugees and asylum who face homophobic, xenophobic and racism from shelter residence and administrators

### **TO LGBTIQ AND ASYLUM SEEKERS**

1. Make sure to renew papers in a timely manner.
2. Report any kind of abuse of their rights to the law enforcement or civil society organisations.
3. Build support network by participating in other gay communities or solidarity activities.
4. Report any labour issues to the relevant authorities (unfair dismissal, documentation).
5. Know basic human rights where possible.
6. Stop self-discrimination.

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